

SENATE BILL No. 545

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.4.

Synopsis: Powerplant certification and siting. Defines "facility" to mean a powerplant that: (1) generates electricity for the wholesale or retail market; and (2) has a generating capacity of at least 25 megawatts. Prohibits a person from constructing a facility without first obtaining a siting certificate from the Indiana utility regulatory commission (IURC). Allows the IURC to order an independent study on the environmental impact of the proposed facility. Requires the applicant for a siting certificate to submit a fee of \$50,000 to be applied toward the cost of any environmental study ordered by the IURC. Allows local zoning and planning officials to petition the IURC for zoning jurisdiction over the siting of a proposed facility. Requires the IURC to hold a hearing on all applications for siting certificates. Specifies the conditions that an applicant must meet before the IURC may grant a siting certificate. Requires the holder of a siting certificate to obtain an amended siting certificate if the holder makes certain alterations to the facility or the operation of the facility. Requires a certificate holder to construct, operate, and maintain the facility in accordance with the certificate. Allows the IURC to monitor a facility for compliance.

Effective: Upon passage.

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January 23, 2001, read first time and referred to Committee on Energy and Economic Development.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 545

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 8.4. Utility Powerplant Certification and Siting**

5 **Sec. 1. As used in this chapter, "brownfield" has the meaning set**
6 **forth in IC 13-11-2-19.3.**

7 **Sec. 2. As used in this chapter, "certificate holder" refers to a**
8 **person that has been granted a siting certificate or an amended**
9 **siting certificate under this chapter.**

10 **Sec. 3. As used in this section, "environment" includes:**

11 (1) air;

12 (2) land;

13 (3) ground and surface water; and

14 (4) plant life and animal life, other than human life.

15 **Sec. 4. As used in this chapter, "facility" means an electric**
16 **power generating plant that:**

17 (1) generates electricity for the wholesale or retail market;



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and

(2) has a generating capacity of at least twenty-five (25) megawatts.

The term includes a combination of electric power generating plants that are located at a single site. The term also includes transmission lines connecting a plant to a power transmission system or to an interconnected primary transmission system, or to both.

Sec. 5. As used in this chapter, "person" means:

(1) any individual, proprietorship, corporation, limited liability company, group, business trust, association, estate, trust, or partnership;

(2) any officer, board, commission, department, division, or bureau of the state or a political subdivision; or

(3) any other entity.

Sec. 6. As used in this chapter, "siting certificate" refers to a certificate required by section 7 of this chapter and issued by the commission under section 14 of this chapter.

Sec. 7. A person may not begin to construct a facility without first obtaining from the commission a certificate stating that the proposed site for the facility meets the conditions specified in section 14 of this chapter. A person is not required to obtain a certificate under this section for activities related to:

(1) engineering or environmental studies;

(2) the acquisition of a site for a facility; or

(3) preliminary site preparation.

The certificate required under this section is in addition to the certificate required under IC 8-1-8.5-2.

Sec. 8. A person who is required to obtain:

(1) a siting certificate under section 7 of this chapter; or

(2) an amended siting certificate under section 9 of this chapter;

for a facility must construct, operate, and maintain the facility according to the terms of the siting certificate or amended siting certificate.

Sec. 9. (a) If a person:

(1) receives a siting certificate from the commission under section 14 of this chapter;

(2) undertakes the construction, operation, or maintenance of a facility; and

(3) seeks to make an alteration described in subsection (b);

the person must apply for and obtain an amended siting certificate

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from the commission in order to continue the construction, operation, or maintenance of the facility.

(b) A person is required to obtain an amended siting certificate under subsection (a) if the person makes a significant alteration to any of the following:

- (1) The location of the facility.
- (2) The ownership of the facility.
- (3) The capacity of the facility.
- (4) The number, type, or size of the facility's plants.
- (5) The type of fuel used by the facility, if the new fuel type was not the fuel considered and approved in the initial siting certificate.
- (6) The facility's effect on the electric and gas transmission systems serving Indiana.

Sec. 10. (a) An application for a siting certificate or for an amended siting certificate must be submitted to the commission on forms the commission prescribes. The applicant shall forward a copy of the application to the department of environmental management and the department of natural resources.

(b) An application for a siting certificate or for an amended siting certificate must contain the following information:

- (1) A description of the facility or proposed facility and its location.
- (2) Summaries of any studies conducted on the environmental impact of the facility or proposed facility.
- (3) A list of alternative locations considered by the applicant for the site of the facility or proposed facility.
- (4) The names and mailing addresses of all record owners of real property located within one-half (1/2) mile of the site of the facility or proposed facility.
- (5) Any other information that:
 - (A) the applicant considers relevant to the application; or
 - (B) the commission requires by rule or order.

An application for an amended siting certificate must contain, in addition to the information required under subdivisions (1) through (5), a description of the alteration that the applicant seeks to make under section 9(b) of this chapter.

(c) The applicant for a siting certificate shall submit a fee of fifty thousand dollars (\$50,000) to be applied toward the cost of any environmental study ordered under section 11 of this chapter. The applicant for an amended siting certificate shall submit a fee, in an amount to be determined by the commission, to be applied toward



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the cost of any environmental study ordered under section 11 of this chapter.

(d) Any money that is submitted under subsection (c) and that remains after the costs described in subsection (c) have been paid shall be returned to the applicant.

(e) The commission shall retain and make available for public inspection a copy of an application made under this section.

(f) Not later than fifteen (15) days after submitting an application under this section, the applicant shall:

(1) send notice of the application, including a description of the facility or proposed facility, by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and

(2) cause notice of the application, including a description of the facility or proposed facility, to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

Sec. 11. When the commission receives an application for a siting certificate or an amended siting certificate under section 10 of this chapter, the commission may order an independent study to assess the effect of the facility or proposed facility on the environment. The commission shall introduce any study conducted under this section into evidence at the hearing required under section 12 of this chapter.

Sec. 12. (a) When the commission receives an application for a siting certificate or an amended siting certificate under section 10 of this chapter, the commission shall schedule a public hearing on the application.

(b) The commission shall send notice of the hearing to the following:

(1) The department of environmental management, the department of natural resources, and any other regulatory agencies, as determined by the commission.

(2) Local officials including:

(A) county commissioners;

(B) the mayor or the city or town executive; and

(C) county or municipal zoning or planning officials, if any;

for the locality where the facility or proposed facility is or will be located.

(3) Record owners of real property located within one-half (1/2) mile of the facility or proposed facility.

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1 Notice under this subsection must be sent by first class mail at least
2 ten (10) days before the scheduled hearing.

3 (c) County or municipal zoning or planning officials that receive
4 notice of a hearing under subsection (b)(2)(C) may petition the
5 commission for zoning jurisdiction over the siting of the facility or
6 proposed facility that is the subject of the application. The
7 commission shall order the petitioning officials to appear at the
8 hearing and present testimony concerning the basis of their
9 petition. The commission shall issue a decision either granting or
10 denying the petitioners' request for zoning jurisdiction not later
11 than seven (7) days after the hearing.

12 (d) The commission shall cause notice of the hearing to be
13 published in a newspaper of general circulation in each county in
14 which the facility or proposed facility is or will be located. The
15 publication required under this subsection must occur once a week
16 for two (2) consecutive weeks, with the second publication
17 occurring at least twenty (20) days before the date of the hearing.

18 (e) The commission may conduct a hearing under this section in
19 the county that contains or will contain the greatest part of the
20 plant or plants that comprise the facility or proposed facility.

21 Sec. 13. (a) The commission shall conduct a hearing required
22 under section 12 of this chapter as a controversial proceeding
23 subject to IC 8-1-1-5.

24 (b) The parties to the hearing include the following:

25 (1) The applicant for the siting certificate or amended siting
26 certificate.

27 (2) A person entitled to notice under section 12(b) of this
28 chapter, if, before the date of the hearing, the person files with
29 the commission a notice of the person's intent to participate
30 in the hearing.

31 (3) The office of utility consumer counselor.

32 (4) Any other person, if, before the date of the hearing, the
33 person petitions the commission for leave to intervene as
34 party and the commission grants the petition.

35 (c) Zoning or planning authorities for the:

36 (1) county; or

37 (2) municipality, if any;

38 where the facility or proposed facility is or will be located may
39 appear on record at the hearing and present testimony concerning
40 the facility or proposed facility. Zoning or planning officials
41 described in section 12(c) of this chapter shall appear on record at
42 the hearing and present the testimony required under that section.

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(d) At the hearing, the applicant has the burden of proof to establish that it meets the conditions required under section 14 of this chapter for the issuance of a siting certificate.

(e) The commission may accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(f) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 14. (a) After conducting the hearing required under section 12 of this chapter and giving full consideration to the evidence presented at the hearing, the commission shall render a decision on an application in an expeditious manner and not later than nine (9) months from the date it received the application. The commission shall issue a siting certificate or an amended siting certificate if the following conditions are met:

(1) The facility or proposed facility meets the commission's requirements for a certificate of public convenience and necessity under IC 8-1-8.5, unless the commission has declined jurisdiction over the facility under IC 8-1-2.5.

(2) The applicant submits to the commission the applicant's plans and schedule for obtaining the licenses or permits required by any regulatory agencies.

(3) Subject to subsection (c), the applicant identifies alternative locations for the facility and the commission determines that the proposed site is preferable to those alternative locations, after giving due consideration to appropriate technical, environmental, and economic factors. The commission may give preference to sites that qualify as one (1) or more of the following:

(A) Brownfield sites.

(B) Sites of existing or former facilities.

(C) Sites that benefit the reliability of Indiana's electric transmission system.

(D) Sites identified for powerplant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

(4) The commission determines that the construction and operation of the facility or proposed facility is in the public interest. In making this determination, the commission shall consider the following:

(A) The location of the facility.



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- 1 (B) The ownership of the facility.
- 2 (C) The management of the facility.
- 3 (D) The financing of the facility.
- 4 (E) The capacity of the facility.
- 5 (F) The number, type, and size of the facility's plants.
- 6 (G) The type of fuel used by the facility.
- 7 (H) The reliability of Indiana's existing electric
- 8 transmission system.
- 9 (I) The facility's effect on the electric and gas transmission
- 10 systems serving Indiana.
- 11 (J) Other factors that the commission considers relevant in
- 12 making the determination required under this subdivision.
- 13 (5) The commission determines that the applicant is willing to
- 14 construct, operate, and maintain the facility under the
- 15 provisions of:
- 16 (A) this chapter; and
- 17 (B) the siting certificate or amended siting certificate.
- 18 (6) The applicant establishes proof of financial responsibility,
- 19 as required under section 15 of this chapter, for the eventual
- 20 costs of closing the facility. The financial responsibility
- 21 established by the applicant must cover the estimated costs set
- 22 forth in the closing plan required under section 15(b) of this
- 23 chapter.
- 24 (b) A decision of the commission under this section is subject to
- 25 judicial review under IC 8-1-3.
- 26 (c) If:
- 27 (1) the commission grants a petition for zoning jurisdiction
- 28 over the siting of a facility to local zoning or planning officials
- 29 under section 12(c) of this chapter;
- 30 (2) the local zoning or planning officials determine that the
- 31 site proposed in the application does not comply with local
- 32 zoning or planning standards;
- 33 the commission may not issue a siting certificate or an amended
- 34 siting certificate that authorizes the construction or expansion of
- 35 a facility on the site proposed in the application. The commission
- 36 may issue a siting certificate or an amended siting certificate for
- 37 any alternative location approved by the local zoning or planning
- 38 officials after the commission makes the determination required
- 39 under subsection (a)(3) with respect to the alternative location.
- 40 Sec. 15. (a) Before the commission may approve an application
- 41 for a siting certificate or an amended siting certificate under
- 42 section 14 of this chapter, the applicant must establish proof of

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financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the applicant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) At the time of filing proof of financial responsibility under subsection (a), an applicant shall submit to the commission a closing plan that sets forth:

- (1) the applicant's plans for closing the facility in an environmentally sound manner;
- (2) the applicant's plans for monitoring, maintaining, and remediating the facility after its closure; and
- (3) the estimated costs of the actions described in subdivisions (1) and (2).

(c) The amount of financial responsibility that an applicant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the facility in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure.

(d) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a facility for which a person has been granted a siting certificate or an amended siting certificate under section 14 of this chapter, if the certificate holder does not comply with the closing plan submitted under subsection (b).

Sec. 16. (a) Issuance of a siting certificate by the commission under section 14 of this chapter authorizes the construction of the facility on the site designated in the siting certificate and according to the terms and conditions specified in the siting certificate.

(b) A siting certificate or an amended siting certificate issued by



the commission under section 14 of this chapter must require the certificate holder to meet the permit or licensing requirements of the department of environmental management and the department of natural resources.

(c) After granting a siting certificate or an amended siting certificate, the commission may monitor the facility for compliance with the terms and conditions of the siting certificate. Representatives of the commission may enter the facility at any time to make an inspection.

(d) A siting certificate terminates if the commission determines that the holder of the certificate has failed:

(1) to begin construction of the facility within two (2) years after:

(A) the issuance of the siting certificate; or

(B) the holder receives all required permits, including any environmental permits;

whichever is later; or

(2) to complete construction of the facility within ten (10) years after issuance of the siting certificate.

(e) Subject to the approval of the commission, a siting certificate or an amended siting certificate may be transferred to any person with the financial, managerial, and technical ability to operate the facility according to the terms of the siting certificate or amended siting certificate. A siting certificate or an amended siting certificate may be transferred by operation of law to any receiver, trustee, or similar assignee under a mortgage, deed of trust, or similar instrument.

Sec. 19. (a) A person who:

(1) begins to construct a facility without first obtaining from the commission a siting certificate;

(2) constructs, operates, or maintains a facility other than in compliance with a siting certificate or an amended siting certificate; or

(3) causes an act described in subdivision (1) or (2);

is liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation and for each day the violation continues.

(b) The commission's authority to impose a civil penalty under this section is subject to the right of a person described in subsection (a) to receive notice of the penalty and an opportunity to be heard regarding the penalty.

(c) The commission may file an action in the circuit or superior

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1 court with jurisdiction in the county where a facility is located to
2 obtain:

3 (1) a restraining order; or

4 (2) temporary or permanent injunctive relief;

5 as necessary to obtain compliance with this chapter by the facility.

6 Sec. 20. (a) Under IC 8-1-2.5-5, the commission may decline to
7 exercise its jurisdiction under this chapter or under IC 8-1-8.5 with
8 respect to a facility.

9 (b) The commission may adopt rules under IC 4-22-2 to
10 establish procedures:

11 (1) for the exercise of its jurisdiction under this chapter; or

12 (2) for the exercise of its jurisdiction under IC 8-1-8.5;

13 that differ depending on the type, size, or fuel source of the facility
14 under review. The commission may adopt rules under IC 4-22-2 or
15 issue an order under IC 8-1-2.5-6 to further implement this
16 chapter.

17 Sec. 21. Except as provided in section 14(c) of this chapter, the
18 commission's authority supercedes the authority of any local
19 zoning, planning, land use, or building agencies, boards, or
20 authorities, or of any similar local agencies, boards, and
21 authorities, with respect to the:

22 (1) site routing design;

23 (2) configuration;

24 (3) construction;

25 (4) location; and

26 (5) use;

27 of any facility for which a siting certificate is required under this
28 chapter.

29 SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this
30 SECTION, "commission" refers to the Indiana utility regulatory
31 commission established by IC 8-1-1-2.

32 (b) As used in this SECTION, "facility" has the meaning set
33 forth in IC 8-1-8.4-4, as added by this act.

34 (c) As used in this SECTION, "person" has the meaning set
35 forth in IC 8-1-8.4-5, as added by this act.

36 (d) As used in this SECTION, "siting certificate" has the
37 meaning set forth in IC 8-1-8.4-6, as added by this act.

38 (e) Notwithstanding IC 8-1-8.4-7, as added by this act, a person
39 is not required to obtain a siting certificate from the commission
40 before beginning to construct a facility if the person has:

41 (1) acquired a site for the facility;

42 (2) publicly announced the person's intention to construct the

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1 facility;
 2 (3) entered contracts for major components of the facility;
 3 and
 4 (4) filed a petition for or received a certificate of public
 5 convenience and necessity under IC 8-1-8.5-2, or filed a
 6 petition for or obtained an order in which the commission
 7 agrees to decline its jurisdiction over the person under
 8 IC 8-1-2.5-5;
 9 before the effective date of this act.
 10 SECTION 3. An emergency is declared for this act.

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